No. 88-1125
No. 88-1309

In the Supreme Court of the United States

OCTOBER TERM, 1989

HODGSON, ET AL.,
APPELLANTS AND CROSS APPELLEES,
v.
MINNESOTA,
APPELLEES AND CROSS APPELLANTS.

On appeal from the United States Court of Appeals for the Eighth Circuit

No. 88-805

OHIO,
APPELLANT,
v.
AKRON CENTER FOR REPRODUCTIVE HEALTH,
APPELLEE.

On appeal from the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICI CURIAE* IN SUPPORT OF HODGSON APPELLANTS AND AKRON APPELLEES BY The Center for Population Options, et al.

(Complete list of *amici curiae* appears on first page)

JOHN H. HENN
(Counsel of Record)
NINA JOAN KIMBALL
FOLEY, HOAG & ELIOT
One Post Office Square
Boston, Massachusetts 02109
(617) 482-1390

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The Center for Population Options
Planned Parenthood League of Massachusetts, Inc.
Girls Clubs of America
Massachusetts Judicial Consent for Minors Lawyer Referral Panel
Mobilization for Youth Health Services, Inc.
United States Student Association
YWCA of Brooklyn
Students and Youth Against Racism
William Kassen, Comm. on Child Development Research & Public Policy
American Public Health Association
National Family Planning and Reproductive Health Association
Abortion Rights Mobilization
Abortion Rights Council
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Queen's Bench of the San Francisco Bay Area
Fresno Free College Foundation

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Page

Other Authorities:

Page

Interest of *Amici Curiae*

The Center for Population Options and other amici, whose interests are identified in Appendix A, are individuals and organizations concerned with problems of teenage pregnancy and too-early childbearing, and the need for confidential access to safe, legal abortion services for minors. Based on their experience and expertise with teenage girls, *amici* wish to bring to the Court's attention facts concerning the medical risks and societal cost of teenage pregnancy and too-early childbearing, and to urge that the Court allow minors to exercise the fundamental right to choose abortion without the compelled involvement of their parents.[1]

Summary of Argument

This brief focuses on pregnant teenage girls, on the individual and societal importance of preserving their right to make a personal individual choice between abortion and childbirth without the compelled involvement of their parents, and on the devastating harm that removing or restricting that right would cause to teenage girls in particular. At minimum, preservation of their right to choose requires that the state not compel parental notice or consent unless it provides for a meaningful judicial or other alternative.

Whatever we might wish, sexual activity and unintended pregnancies have become a concrete reality of teenage girls' lives. Because most teenage pregnancies are unintended, and because unwanted childbirth and motherhood are so exceptionally burdensome for a teenage girl, a pregnant teenager's right to determine her future must include the right to choose safe, legal abortion instead of childbirth. Legislatively-compelled parental notification can be the functional equivalent of a parental veto of the abortion choice. Teenage girls, therefore, need to be able to make this decision with the support of

[1] This brief is filed with the consent of the parties.

those they choose, including parents, but without the *forced* involvement of their parents, which could result in delays, outright denial of abortion or severe, even violent, consequences.

The life-shaping importance to teenage girls of their existing right to make a personal, individual choice whether to terminate a pregnancy is illustrated in these striking facts:

- Over 1 million teenagers become pregnant each year.[2]
- 84% of all teenage pregnancies (married and unmarried) are unintended.[3]
- 92% of premarital teenage pregnancies are unintended.[4]
- 42% of pregnant teenage girls choose abortion each year, and 44% of these are under the age of 18.[5]
- ~~One in four~~ teenage mothers drops out of high school, and only one in fifty finishes college.[6]
- In 1987, families begun with a teenage birth cost the federal government $19.27 billion in welfare payments.[7]

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[2] Alan Guttmacher Institute [AGI], *Teenage Pregnancy in the United States*, Table 4 (1989) [AGI, *Teenage Pregnancy in the U.S.*]; Ventura, Taffel & Mosher, *Estimates of Pregnancies and Pregnancy Rates for the United States, 1976-85*, 78 Am. J. Pub. Health 506, 508, Table 2 (1988) (data for 1972 to 1985; 1985 is latest year for which detailed statistics on abortion are available); AGI, *Teenage Pregnancy: The Problem That Hasn't Gone Away* 17 (1981) [AGI, *Teenage Pregnancy*].

[3] Jones, Forrest, Goldman, Henshaw, Lincoln, Rosoff, Westoff & Wulf, *Teenage Pregnancy in Industrialized Countries* 40 (1986) [Jones, *et al.*]. Calculations by CPO from cited data.

[4] *Id.*

[5] AGI, *Teenage Pregnancy in the U.S.*, *supra* n. 2, Table 1; Henshaw, *Characteristics of U.S. Women Having Abortions, 1982-83*, 19 Fam. Plan. Persp. 5 (1987).

[6] Center for Population Options [CPO], *The Facts: Teenage Childbearing, Education, and Employment* (1987).

[7] CPO, *1988 Report: Estimates of Public Cost for Teenage Childbearing in 1987* at 2 (1988) [CPO, *1988 Report*] (calculating payments under Food Stamps, Medicaid and Aid to Families with Dependent Children (AFDC) programs). The $19.27 billion represents more than half of all payments under these three programs.

- Parental notification requirements do not significantly increase parental involvement in the abortion decision.[8]
- Forced parental notification of the decision to abort would cause 20% of teenage girls who would not voluntarily consult their parents to self abort or have an illegal abortion rather than notify their parents.[9]
- Only 4% of unmarried teenage mothers surrender their infants for adoption.[10]

As this Court (including Chief Justice Rehnquist) observed in its leading case concerning minors and abortion:

> [T]he potentially severe detriment facing a pregnant woman is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, *there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.*[11]

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[8] *Hodgson* v. *Minnesota*, 648 F.Supp. 756, 775 (D. Minn. 1986), *rev'd on legal grounds*, 853 F.2d 1452 (8th Cir. 1988) (en banc); Blum, Resnick & Stark, *The Impact of a Parental Notification Law on Adolescent Abortion Decision-Making*, 77 Am. J. Pub. Health 619, 620 (1987); Torres, *Does Your Mother Know ... ?*, 10 Fam. Plan. Persp. 280, 281 (1978).

[9] Torres, Forrest & Eisman, *Telling Parents: Clinic Policies and Adolescents' Use of Family Planning and Abortion Services*, 12 Fam. Plan. Persp. 284, 288-289 & Table 7 (1980).

[10] AGI, *Teenage Pregnancy*, *supra* n. 2, at 27.

[11] *Bellotti* v. *Baird*, 443 U.S. 622, 642 (1979) [*Bellotti II*] (plurality opinion) (emphasis added). The statement quoted in text surely commanded the support of eight members of the Court. *See id.* at 652 (concurring opinion of Justices Stevens, Brennan, Marshall, and Blackmun).

Part I of this brief, thus, will describe the unintended and unanticipated nature of most teenage pregnancy; the heightened physical and psychological risks to teenage girls of pregnancy and childbearing, which greatly exceed the risks of abortion at any stage of pregnancy; the overwhelming costs to teenage girls and to society of teenage pregnancy and too-early childbearing; the privacy needs of teenage girls in matters of sexuality and reproductive choice; and the severe, even violent, harm that follows from compelling unwanted parental involvement in the abortion decision. Part II will describe how a minor must be able to exercise her fundamental right to choose abortion without the compelled participation of her parents; will explain why minors must at least retain a judicial consent ("by-pass") or other alternative to such compelled participation; and will propose rules and guidelines for by-pass alternatives to compelled parental participation (specifically referring to those that have been successfully used in Massachusetts for nearly ten years).

Argument

I. A Decision by This Court to Take Away or Constrain the Fundamental Right to Choose Would Devastate Teenage Girls.

This Court would devastate the lives of teenage girls by erecting such insuperable barriers to their long-recognized fundamental right to choose between abortion and childbirth as compelled parental consent or notification. Teenage sexual activity and unintended pregnancies are concrete realities of American life today. Constraining the right to choose abortion by forcing parental involvement in the decision will not reduce teenage sexual activity or unintended teenage pregnancy.[12]

[12] In the United States today, seven out of ten teenage girls and eight out of ten teenage boys have sexual intercourse by the time they reach age twenty. CPO, *The Facts: Teenage Sexuality, Pregnancy, and Parenthood* (1987). As to unintended pregnancies, *see supra* notes 2-7 and statistics in the accompanying text.

What it will do is delay the abortion choice, provoke unnecessary crisis and disharmony in family relations and dramatically increase unwanted teenage childbearing, all with profoundly adverse costs to teenage girls' lives and futures.

A. *Teenage Pregnancy Is Almost Always Unintended.*

Teenage girls do not become pregnant by design. Eight out of ten of the 1.1 million teenage pregnancies in the United States each year are unintended.[13] Most teenagers do not use contraceptives or use them inconsistently, especially in the early months of sexual activity, whether due to ignorance or ambivalence about contraception, or ambivalence about sexuality, or both.[14] Thus, among unmarried teenagers who be-

Studies show that the restrictions on the availability of abortion caused by parental notification and consent laws do not reduce teen pregnancy. Cartoof & Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 Am. J. Pub. Health 397, 400 (1986). The most effective way to reduce teen pregnancy is not to restrict or deny access to abortion but to increase sex education and the availability of contraception. A study comparing teenage pregnancy in the United States with that of other industrialized countries found sexual activity in the United States was comparable to that in other countries, but that teenage pregnancy and birth rates were lower in other countries because of greater availability of sex education, contraceptives and abortion services. Jones, *et al.*, *supra* n. 3, at 234-35.

[13] Jones, *et al.*, *supra* n. 3. 92% of pregnancies to unwed teenage girls are unintended and 51% of pregnancies to married teens are unintended. Altogether, approximately 84% of all teenage pregnancies are unintended, since the vast majority of teen pregnancies (almost 80%) occur out-of-wedlock. *Id.*

[14] AGI, *Teenage Pregnancy*, *supra* n. 2, at 14-16; Zelnick & Kantner, *Sexual Activity, Contraceptive Use and Pregnancy Among Metropolitan-Area Teenagers: 1971-1979*, 12 Fam. Plan. Persp. 230, 236, Table 8 (1980); Zabin & Clark, *Institutional Factors Affecting Teenagers' Choice and Reasons for Delay in Attending a Family Planning Clinic*, 15 Fam. Plan. Persp. 25 (1983). Zabin's study reports that teens tend to delay almost a year (median of 11.5 months) after becoming sexually active before going to a family planning clinic. Moreover, nearly two thirds of unmarried teenage girls reported that they never used contraceptives or did so inconsistently. AGI, *Teenage Pregnancy*, *supra* n. 2, at 14. The reasons for failure to use contraceptives vary, including those who thought they could not become pregnant, those who did not expect to have sexual intercourse, those who "couldn't [use them] under the circumstances," and those who did not know how to get contraceptives. *Id.*

come pregnant, *fifty percent* of pregnancies occur within the first six months of becoming sexually active; *twenty percent* occur within the first month.[15] Forty-two percent of all teenage girls (married or unmarried) choose to resolve their unwanted pregnancies through abortion.[16] These statistics, which reflect the relatively low impact of current contraceptive availability and education on the teenage pregnancy rate, demonstrate that the vast majority of teenage girls do not focus on the issue of whether to bear a child and how childbearing will affect their future until an unintended pregnancy forces them to do so.

At this critical juncture in teenage girls' lives, abortion becomes an especially important — and in many cases life-saving — reality. Common sense, as well as the results of abortion restrictions directed specifically at minors,[17] teaches that erecting barriers to the right to choose abortion will not reduce teenage sexual activity and pregnancy; it will simply increase unwanted teenage childbearing.

B. *Teenage Pregnancy and Childbearing Is Highly Risky Physically and Psychologically for Teenage Girls and the Children They Bear.*

Adolescent pregnancies carried to term, and resulting childbearing, are usually very detrimental physically and psychologically for teenage girls, as well as for the infants they bear. During pregnancy, teenagers are at much higher risk of suffering from serious medical complications, including iron-deficiency anemia, pregnancy-induced hypertension ("toxemia", which is a leading cause of mortality), complications from small pelvises, and cervical immaturity resulting in premature

[15] Hofferth, *Contraceptive Decisionmaking Among Adolescents*, in *Risking the Future: Adolescent Sexuality, Pregnancy, and Childbearing*, Vol. II., at 64 (Hofferth & Hayes eds. 1988) *[Risking* Vol. II]; AGI, *Teenage Pregnancy, supra* n. 2, at 16, 19.

[16] AGI, *Teenage Pregnancy in the U.S., supra* n. 2, Table 1.

[17] Cartoof & Klerman, *supra* n. 12, at 400.

births.[18] Mortality rates from continued pregnancy and childbearing are much higher for teenage girls than for women aged 20-24.[19] Teenage girls aged 15-19 are twenty-four times more likely to die from childbirth than from first-trimester abortion,[20] and the dangers are considerably higher for girls under age 15.[21] By contrast, for all women, but especially for teenage girls, abortion is one of the safest surgical procedures doctors perform.[22] At no time during pregnancy do the risks of abortion surpass the risks of continuing the pregnancy to delivery.[23] The same is true for rates of morbidity — serious illness or injury with lasting effects — related to childbirth when compared to abortion.[24]

A major reason why the health risks of pregnancy and childbearing are greater for teenage girls than for adult women is

[18] Hunter, *Time Limits on Abortion*, in *Reproductive Laws for the 1990s*, at 134 & n. 15 (Cohen & Taub eds. 1989); National Commission to Prevent Infant Mortality, *Death Before Life: The Tragedy of Infant Mortality*, Appendix at 103 (1988) [NCPIM]. Inadequate prenatal care, a problem especially common for teenage girls, is associated with excessive weight gain, premature labor, prolonged labor, vaginal infections and vaginal lacerations. Mackinson, *The Health Consequences of Teenage Fertility*, 17 Fam. Plan. Persp. 132, 134 (1985).

[19] Ory, *Mortality Associated with Fertility and Fertility Control*, 15 Fam. Plan. Persp. 57, 59, Table 2 (1983). Calculations by CPO from cited data.

[20] *Id.*

[21] Sacker & Neuhoff, *Medical and Psychosocial Risk Factors in the Pregnant Adolescent*, in *Pregnancy in Adolescence: Needs, Problems, and Management* 107 (Stuart & Wells eds. 1982); *Risking The Future: Adolescent Sexuality, Pregnancy and Childbearing*, Vol. I, at 124 (C. Hayes ed. 1986) [*Risking*, Vol. I].

[22] Cates & Grimes, *Morbidity and Mortality of Abortion in the United States*, in *Abortion and Sterilization: Medical and Social Aspects*, 155, 177 (Hodgson, ed. 1981). "Complications following induced abortion are generally lower among adolescents than among older women, regardless of the gestation at which the abortion is performed or the method used." *Risking*, Vol. I, *supra* n. 21, at 125; *see also*, Cates, *Adolescent Abortions in the United States*, 1 J. Adolescent Health Care 18, 19-22 (1980) [Cates]; Cates, Schultz & Grimes, *The Risks Associated With Teenage Abortion*, 309 N. Eng. J. of Medicine 621 (1983).

[23] Tietze & Henshaw, *Induced Abortion: A World Review 1986*, at 110, 111 (1986).

[24] Cates, *supra* n. 22, at 20; Cates & Grimes, *supra* n. 22.

that teenagers delay seeking prenatal care if they seek it at all.[25] In New York City, more than one third of pregnant teenage girls received no prenatal care or only last-trimester care, compared to eighteen percent for women as a whole.[26]

Teenage pregnancy, exacerbated by inadequate prenatal care, also leads to premature births and low birth weight,[27] which in turn are leading causes of infant morbidity and mortality. Low birth-weight infants are at increased risk of neurodevelopmental problems, especially cerebral palsy, seizure disorders and mental retardation.[28] Children of teenage mothers are twice as likely to die in infancy than those born to women in their 20s, and are also more likely to die than children of women in their 40s, whose children are also a high-risk group.[29] Low birth weight is also associated with longer-term

[25] Mackinson, *supra* n. 18, at 134. Teens tend to seek prenatal care later than adult women because of its cost, ambivalence or denial concerning their pregnancy, a desire for secrecy and confidentiality, difficulty in scheduling appointments, and/or lack of knowledge about the health care system. Institute of Medicine, *Prenatal Care: Reaching Mothers, Reaching Infants* 78, 101 (Brown ed. 1988) [Inst. of Medicine, *Prenatal Care*]. Policies of some clinics and hospitals to notify parents when minors use their services affects minors' decision to seek prenatal care and choice of clinics. *See* Zabin & Clark, *supra* n. 14, at 26, 27, 29.

[26] Hunter, *supra* n. 18, at 134, citing to *New York City Dep't of Public Health, Summary of Vital Statistics* 16, 17 (1986). Nationally, 13 percent of teens receive late or no prenatal care whereas only 6 percent of women as a whole receive late or no prenatal care. National Center for Health Statistics, *Advance Report of Final Natality Statistics*, Monthly Vital Statistics Report 38:3 Table 30 (1989) [NCHS].

[27] AGI, *Teenage Pregnancy*, *supra* n. 2, at 29; NCHS, *supra* n. 26, Table 15.

[28] Institute of Medicine, *Preventing Low Birthweight* 26-29, 32-33, 37 (1985); *Substantially Higher Morbidity and Mortality Rates Found Among Infants Born to Adolescent Mothers*, 16 Fam. Plan. Persp. 91-92 (1984).

[29] AGI, *Teenage Pregnancy*, *supra* n. 2, at 29. Studies show that other factors such as the mother's socioeconomic status, health care and nutritional habits and education also contribute to health and developmental problems of low birth-weight babies. Teenage mothers are at a high risk of experiencing these characteristics. Mackinson, *supra* n. 18, at 137-38; NCPIM, *supra* n. 18, at 103; *Social Factors, Not Age, Are Found to Affect Risk of Low Birth Weight*, 15 Fam. Plan. Persp. 142-43 (1984).

problems, including a greater frequency of illness, and developmental problems such as lack of success in school.[30]

An *unwanted pregnancy* is a serious and emotionally traumatic event in a teenager's life. Before abortions were legal and accessible to minors in a confidential manner, a large proportion of teenage girls who attempted or succeeded in suicide thought they were, or actually were, pregnant.[31] Few teenagers have adverse psychological reactions to abortion, and most are relieved to have terminated an unwanted pregnancy:[32] "[t]here is no research evidence to support" the assumption that "adolescents are especially vulnerable to serious psychological harm as a result of having an abortion."[33] To the contrary, pregnancy continuation poses "far greater psychological, physical, and economic risks to the adolescent than does abortion."[34]

C. *Pregnant Teenagers, Teenage Mothers and Their Families Are More Likely to Lose Educational and Economic Opportunities and to Be Dependent Upon Public Support.*

Childbearing irrevocably alters the life of a teenage girl. When a woman is ready to bear a child, motherhood is one of the most rewarding and fulfilling of life's experiences. But unwanted motherhood is devastating, especially for a teenage

[30] Inst. of Medicine, *supra* n. 28, at 32-33.

[31] Teicher, *A Solution to the Chronic Problem of Living: Adolescent Attempted Suicide*, in *Current Issues of Adolescent Psychiatry* 129, 136 (Schoolar ed. 1973).

[32] Adler & Dolcini, *Psychological Issues in Abortion for Adolescents*, in *Adolescent Abortion: Psychological and Legal Issues* 84 (Melton ed. 1986).

[33] American Psychological Association, Interdivisional Committee on Adolescent Abortion, *Adolescent Abortion: Psychological and Legal Issues*, 42 Am. Psychologist 73, 74 (1987) [APA].

[34] Lewis, *Minors' Competence to Consent to Abortion*, 42 Am. Psychologist 84, 87 (1987); *see also* Marecek, *Consequences of Adolescent Childbearing and Abortion*, in *Adolescent Abortion: Psychological and Legal Issues* 96-115 (Melton ed. 1986); Adler & Dolcini, *supra* n. 32, at 90; Cates, *supra* n. 22, at 22.

girl. The cost of too-early childbearing is borne not just by the teenager, whose future is suddenly restricted, but by the child she bears and by society as a whole. These costs exist today — in a world in which teenagers *have* a right of abortion choice. The elimination or constriction of that choice could only make those costs vastly higher.

Pregnancy is the leading reason teenage girls drop out of school. One in four teenage mothers drops out of high school and only one in fifty graduates from college. By comparison, one in five women who put off childbearing until their mid-20s graduates from college.[35] Teenage mothers' family responsibilities and frequently truncated education lead them into lower-paying, lower-status jobs, where they accumulate less work experience and earn lower annual wages than women who postpone childbearing.[36]

Children born to teenagers from an unwanted pregnancy will be disadvantaged educationally, socially, and psychologically.[37] They tend to have lower I.Q. and achievement scores, and less success in school.[38] According to expert testimony before Congress on behalf of the American Public Health Association, children born of unwanted pregnancies experienced lower scholastic achievement, had less job satisfaction, fewer and less satisfying relations with friends, lovers and spouses, and began sexual activity earlier than children born of ac-

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[35] CPO, *Teenage Childbearing*, *supra* n. 6; *Risking*, Vol. II, *supra* n. 15, at 125-28. Teenage fathers are also more likely to drop out of high school than their counterparts who remained childless throughout their teens. The lower high school completion rate for teenage fathers restricts their financial ability to support their partner and child. Marsiglio, *Adolescent Fathers in the United States: Their Initial Living Arrangements, Marital Experience and Educational Outcomes*, 19 Fam. Plan. Persp. 241, 247, 249 (1987).

[36] CPO, *Teenage Childbearing*, *supra* n. 6; *Risking*, Vol. I, *supra* n. 21, at 130-32.

[37] *See generally*, Marecek, *supra* n. 34.

[38] Baldwin & Cain, *The Children of Teenage Parents*, 12 Fam. Plan. Persp. 34, 37 (1980); *Adolescent Pregnancy and Childbearing — Rates, Trends and Research Findings From the CPR, NICHD* 10-11 (1988) [*Adolescent Pregnancy and Childbearing*].

cepted pregnancies.[39] "In the aggregate, unwantedness in early pregnancy and involuntary child-bearing have a detrimental effect on the subsequent psychosocial development of the child with socially undesirable longer term implications."[40] That these children could be both unwanted, and forced upon a teenage girl by the state, is doubly tragic.

Teenage motherhood also imposes enormous costs on society. Teenage mothers, whose educational and economic achievement is severely restricted, are more likely to become dependent on public support. Fifty-three percent of AFDC payments are allotted to families that began when the mother was a teenager.[41] In 1987 alone, the federal government spent $19.27 billion in AFDC, Medicaid and Food Stamp benefits on families in which the mother first gave birth as a teenager.[42] It is estimated that over the next twenty years, the federal government will spend $5.7 billion in welfare payments to all babies born in 1987 to teenage girls.[43] Moreover, children of teenage parents are more likely to become teenage parents themselves, thus perpetuating the cycle of poverty begun by a teenage birth.[44]

Too-early childbearing is already a serious public health problem. Erecting barriers to the right to choose abortion will reverse the recent success in reducing the teenage birth rate

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[39] David, *Abortion Obtained and Denied: Psychosocial Risks, Statement prepared for presentation to the Subcommittee on Human Resources and Intergovernmental Relations of the Committee on Government Operations of the U.S. House of Representatives*, at 6 (Mar. 1989).

[40] *Id.*

[41] CPO, *Estimates of Public Costs for Teenage Childbearing* (1986); CPO, *Estimates of Public Costs for Teenage Childbearing* (1987); CPO, *1988 Report*, *supra* n. 7.

[42] CPO, *1988 Report*, *supra* n. 7, at 2. In 1975, 64 percent of AFDC mothers under age 30 had been teenage mothers compared to 24 percent of American women as a whole between age 20 and 30. *Adolescent Pregnancy and Childbearing*, *supra* n. 38, at 12.

[43] CPO, *1988 Report*, *supra* n. 7, at 3.

[44] CPO, *Teenage Childbearing*, *supra* n. 6; *Risking*, Vol. I, *supra* n. 21, at 134; *Adolescent Pregnancy and Childbearing*, *supra* n. 38, at 11.

and frustrate efforts to bring more women into early prenatal care,[45] making an already tragic situation worse.

D. *Teenage Girls Need Even More Privacy in Matters of Sexuality Than Older Women and Forced Parental Involvement Harms, Rather Than Enhances, the Quality of Their Decision Making in Matters of Reproductive Rights.*

Many teenage girls who are faced with reproductive decisions are just becoming acquainted with their own sexuality.[46] Their ambivalence and discomfort over sexual matters enhance their need for confidentiality and privacy in matters of reproductive choice, exceeding that of adult women.[47] For example, confidentiality is a primary reason teenagers choose a particular family planning clinic.[48] Forced parental notification of contraceptive use also leads to a decline in adolescent clinic use and effective use of contraceptives, but not to a decline in sexual activity, thus leading to a rise in unintended pregnancies among teens.[49] Although most teens, particularly young teens, voluntarily involve a parent in a pregnancy deci-

[45] AGI, *Teenage Pregnancy in the U.S.*, *supra* n. 2, Table 5.

[46] Fifty percent of pregnancies among unmarried teenagers occur during the first six months of sexual activity and twenty percent occur during the first month. *See supra* n. 15 and accompanying text.

[47] Unmarried teenage girls are especially concerned to keep confidential the existence of a pregnancy and their decision whether to terminate it. For example, one study found that a desire to keep the pregnancy secret and a need for confidentiality in obtaining prenatal health care services led many teens to seek late prenatal care and influenced their choice in health care providers. Institute of Medicine, *Prenatal Care*, *supra* n. 25, at 78. A study of 17 deaths following post-*Roe* illegal abortions concluded that a desire for secrecy was the primary reason two teenagers who died had self aborted. Binkin, Gold & Cates, *Illegal Abortion Deaths in the United States: Why are They Still Occurring?* 14 Fam. Plan. Persp. 163, 165 (1982); *see also Bellotti II*, 443 U.S. at 644 (requiring "anonymity" for minors' judicial consent for abortion proceedings).

[48] Zabin & Clark, *supra* n. 14, at 26, Table 1.

[49] Torres, *supra* n. 8, at 282. One study found that 56% of minors who attended a family planning clinic without their parents' knowledge (which represented 23% of those attending) would stop attending if their parents were notified. Of those, 65% would stop using medically prescribed contraceptives (i.e., pill, IUD, diaphragm) and would resort to non-medical methods (i.e., condom, foam, withdrawal), 10% would use no contraception at all, and only 10% surveyed said they would refrain from intercourse. Torres, Forrest & Eisman, *supra* n. 9, at 291, Table 10.

sion,[50] those teenage girls who choose not to involve their parents do so for good reasons, ranging from a concern for their parents' feelings to fear of violence or other serious negative consequences, to fear of being prevented from obtaining an abortion.[51]

Parental notification and consent requirements, where they exist, have failed significantly to increase parental involvement in their daughters' reproductive decisions.[52] Instead, most minors who do not choose to consult their parents find ways to avoid compelled parental involvement. For example, more than half of minors who attend family planning clinics without their parents' knowledge would stop attending if their parents were notified. A chilling thirty-nine percent of these girls stated that they would have an illegal or self-induced abortion rather than notify their parents as a condition of a legal abortion. Some would leave home, and four in ten surveyed said that they would carry to term rather than inform their parents of their decision to abort, thus giving up the exercise of their fundamental right to choose abortion.[53]

[50] Studies show that approximately 55% percent of girls under 18 voluntarily discuss matters of reproductive choice with one or both parents. Torres, Forrest & Eisman, *supra* n. 9, at 287 (55% discuss decision to have abortion with parents); Torres, *supra* n. 8, at 281 (55% discuss participation in family planning clinic with parents).

[51] Clary, *Minor Women Obtaining Abortions: A Study of Parental Notification in a Metropolitan Area*, 72 Am. J. Pub. Health 283, 284 (1982); Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, 15 Fam. Plan. Persp. 259, 260-262 (1983).

[52] Blum, Resnick & Stark, *supra* n. 8, at 620; Cartoof & Klerman, *supra* n. 12, at 400; Torres, *supra* n. 8, at 282.

[53] Torres, Forrest & Eisman, *supra* n. 9, at 289, Table 7. This study found that 55% of minors attending a family planning clinic did so with their parents' knowledge and 1% were not sure whether their parents knew. 21% of those surveyed would not voluntarily inform their parents, but would still

II. The Fundamental Right of Minors To Exercise Their Right To Choose Should Not Be Conditioned on Parental Notice or Consent, and Certainly Not Without A Meaningful Judicial or Comparable By-Pass.

The right to terminate a pregnancy free from unwarranted governmental intrusion remains fundamental for both adult women and minor girls,[54] and regulations that impinge on fundamental rights are assessed with heightened scrutiny.[55] Employing heightened scrutiny, the Court must strike down as unconstitutional an unduly burdensome state regulation that the state fails to demonstrate is narrowly tailored to further a compelling interest.[56]

The Minnesota and Ohio statutes,[57] though ostensibly meant to protect minors from making immature decisions and to enhance intrafamily communications, *in fact* fail to accomplish these purposes. At the same time, they impose severe burdens on teenage girls and their families, the very groups they are meant to protect. Accordingly, these statutes are, in

attend the clinic if their parents were required to be notified. The remaining 23% said they would not attend the clinic if their parents were notified: 9% (which represents 39% of the 23% who would no longer attend the clinic) would have an illegal or self-induced abortion; 9% would carry to term; 2% would leave home; and 3% said they did not know what they would do. *Id.*

[54] *Thornburgh* v. *American College of Obstetricians & Gynecologists*, 476 U.S. 747, 759 (1986); *Bellotti* v. *Baird*, 443 U.S. 622, 633 (1979) *(Bellotti II)*; *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 74-75 (1976); *Roe* v. *Wade*, 410 U.S. 113, 153 (1973); *see Webster* v. *Reproductive Health Servs.*, 109 S.Ct. 3040, 3058 (1989).

[55] *Webster*, 109 S.Ct. at 3063 (O'Connor, J., concurring) (regulation that "unduly burdens" right to seek abortion is unconstitutional); *Akron* v. *Akron Center for Reproductive Health*, 462 U.S. 416, 427 (1983); *Bellotti II*, 443 U.S. at 640; *Roe* v. *Wade*, 410 U.S. at 155.

[56] *Id.*; Shaman, *Constitutional Fact: The Perception of Reality by the Supreme Court*, 35 U. Fla. L. Rev. 236, 245 (1983) ("To uphold a regulation without determining that it will in fact [further the state's asserted interest] . . . would be inconsistent with the principles of heightened scrutiny.").

[57] Minn. Stat. Ann. § 144.343(2)-(7) (1989); Ohio Rev. Code §§ 2151.85, 2505.073, 2919.12 (1988 Supp.).

the constitutional sense, not only unduly burdensome, they are not minimally rational.

A. *Parental Notification Laws and Parental Consent Laws Are Functionally Equivalent Because They Cause the Same Harm, and Because For Minors They Impose the Same Burden.*

For minors, there is no real-world difference between parental consent and notification laws.[58] The dangers posed by such requirements are the same: compelled involvement of parents can lead to severely negative, even violent, parental reactions, including preventing the minor from having the desired abortion.[59] According to one study, twenty percent of girls who had decided to have an abortion without their parents' knowledge would carry to term if their parents were *notified* of their decision to have an abortion.[60] In reviewing Minnesota's two-parent notification requirement, the District Court found *as a fact* that revelation of a pregnancy or proposed abortion can lead to obstruction of the desired abortion and, particularly in dysfunctional families, violence and abuse.[61] Parental notification requirements, as well as consent requirements, therefore, can easily act as a veto of a minor's abortion decision. By definition, such an outright veto unduly burdens a minor's right to choose.

[58] Three members of the present Court and Justice Powell have recognized that parental notification requirements are the functional equivalent of consent in the burdens they impose on a minor's exercise of her right to choose. *See H.L.* v. *Matheson*, 450 U.S. 398, 420 & n. 9 (1981) (Powell, J., concurring); *id.* at 437-441 (Marshall, J., dissenting, joined by JJ. Brennan & Blackmun).

[59] Approximately 30% of minors surveyed in one study who did not inform their parents did so for fear of serious negative consequences in the form of physical abuse, other retaliation or being prevented from obtaining the abortion. Clary, *supra* n. 51, at 284.

[60] Torres, Forrest & Eisman, *supra* n. 9, at 288-289 & Table 10.

[61] *Hodgson* v. *Minnesota*, 648 F.Supp. 756, 768-769, 773 (D. Minn. 1986), *rev'd on legal grounds*, 853 F.2d 1452 (8th Cir. 1988) (en banc), *cert. granted*, 109 S.Ct. 3240 (1989).

B. *Parental Notification or Consent Requirements Are Unduly Burdensome and Fail in Operation to Serve Their Intended Purposes.*

Parental notification and consent laws are unconstitutional because they fail to achieve their intended purposes: that of protecting pregnant minors from uninformed or immature abortion decisions, or that of fostering healthy intrafamily communication concerning the decision.[62] Indeed, such laws impose further irrational, gratuitous and useless burdens on minors by damaging their family relationships and delaying their access to abortion services. These statutes were in fact enacted for the unconstitutional purpose of denying access to abortion services.

1. *Parental Notification or Consent Requirements Do Not Protect Minors From Making Immature Decisions.*

Parental notification or consent requirements are overly broad and do not in fact protect minors from making immature decisions. The Minnesota and Ohio statutes, by failing to distinguish mature from immature minors, sweep too broadly. Adolescents as they grow older are generally competent to recognize and assess the consequences of their decisions.[63] Indeed, many states that have enacted parental notification or consent requirements for abortion, including Minnesota and Massachusetts, recognize that minors may be competent to make decisions about their own health care.[64] Minors who are gen-

[62] *Bellotti II*, 443 U.S. at 634.

[63] Lewis, *supra* n. 34, at 85-87.

[64] Minnesota allows *any* minor to give independent consent for diagnosis and treatment for pregnancy, childbearing, venereal disease, alcohol and drug abuse, regardless of his or her maturity. Minn. Stat. Ann. § 144.343(1). In Massachusetts, a pregnant minor or a minor living apart from and financially independent of his or her parents may consent to all forms of medical treatment, including treatment for childbirth, except abortion or sterilization. Mass. Gen L. ch. 112 § 12F (1983 & 1989 Cum. Supp.).

erally less competent to make important decisions, i.e. those who are younger and those who tend to be more conflicted about the decision, generally consult their parents voluntarily.[65] Thus, a notification requirement that covers all minors regardless of age or maturity sweeps too broadly and is not *narrowly* tailored to achieving the state's asserted interest of protecting minors from making immature decisions.

Second, assuming *arguendo* that parental notification and consent requirements were properly motivated, their failure to "protect" immature minors is apparent in their irrational consequences. No intelligible principle could dictate that the best interests of a girl who is so young as to be considered immature and who does not want a child, would best be served by a state-imposed requirement that results in her unwillingly becoming a mother.

The *real* purpose of these statutes is to deny access to abortion. Since abortion is one of the safest medical procedures doctors perform — safer at all stages than childbirth — the special treatment of the abortion decision in these statutes must have as its purpose some reason other than protecting immature minors from making hasty or inadequately-considered decisions about their health care. Such statutes are *over-inclusive* because mature minors are not allowed to consent to an abortion; and they are *under-inclusive* because they allow minors regardless of their maturity to consent to other health care treatment that imposes far greater health risks than abortion.[66] These regulations are neither narrowly tailored, nor even rationally related, to the State's interest in protecting minors from making immature decisions, and are thus unconstitutional.[67]

[65] Lewis, *supra* n. 34, at 87; Torres, Forrest, & Eisman, *supra* n. 9, at 288.

[66] These statutes allow pregnant minors to consent to medical care relating to childbirth, yet teenage girls aged 15-19 are twenty-four times more likely to die from childbirth than from first trimester abortion. Ory, *supra* n. 19, at 59, Table 2. Even an appendectomy is 100 times more dangerous than a legal induced abortion. Cates & Grimes, *supra* n. 22, at 170.

[67] *Thornburgh*, 476 U.S. at 763; *Akron*, 462 U.S. at 427; *Bellotti II*, 443 U.S. at 640; *Roe* v. *Wade*, 410 U.S. at 155.

2. *Parental Notification or Consent Requirements Do Not Enhance Intrafamily Communications.*

These statutes also fail to further, and in practice undermine, the state's alternative asserted purpose of fostering productive intrafamily communication concerning a minor's abortion decision.[68] Most teenagers voluntarily involve their parents.[69] But for those who choose not to involve their parents, these statutes do not significantly increase parents' involvement.[70] Moreover, the evidence at trial in *Hodgson* failed to identify any beneficial effect on intrafamily communication of forced notification. Experts credited by the court testified that voluntariness has been found to be the hallmark of productive family communication, and that forced communication not only fails to promote productive relations but typically damages them. These experts further testified that revelation of a pregnancy or proposed abortion through compulsion or inadvertence "is almost universally negative" and can provoke crisis and disharmony.[71] Such provocation is particularly dangerous in dysfunctional families in which violence and abuse often result from revelation of a pregnancy or desire to terminate it.[72]

[68] *See* Melton, *Legal Regulation of Adolescent Abortion: Unintended Effects*, 42 Am. Psychologist 79 (1987).

[69] One study found that in Minnesota 65.3% of minors voluntarily consult *at least one* parent. Blum, Resnick & Stark, *supra* n. 8, at 620. In Massachusetts, approximately 75% of minors get the consent of their parents for their abortion. Planned Parenthood League of Massachusetts, *The Massachusetts Parental/Judicial Consent Law for Minors Seeking Abortion* 3 (1988) [PPLM]. Two studies of minors attending clinics found that 55% voluntarily informed their parents of their participation in the clinic and of their decision to have an abortion. Torres, *supra* n. 8, at 281 (clinic use); Torres, Forrest & Eisman, *supra* n. 9, at 287 (abortion decision).

[70] One study found that the primary impact of the Massachusetts consent statute was to drive minors out of state to obtain a confidential abortion. Cartoof & Klerman, *supra* n. 12, at 399. A study comparing the notification rate of minors in Minnesota with that of minors in Wisconsin (which has no notification or consent statute) found only a slightly higher percentage of Minnesota minors notified both parents (as required by statute) than did Wisconsin minors, and that the percentage of minors in both states that voluntarily notified at least one parent was statistically indistinguishable (65.3% compared to 62.1%). Blum, Resnick & Stark, *supra* n. 8, at 620. Witnesses who provided counseling and abortion services to minors both before and after enactment of Minnesota's statute testified at trial in *Hodgson* that they did not observe any post-enactment change in the level of parental participation. 648 F.Supp. at 775. The court explicitly considered and rejected the possibility that the very existence of the statute had encouraged minors, particularly immature, non-best-interest ones, to inform parents of their pregnancy. *Id.*

3. *Parental Notification or Consent Requirements Harm Pregnant Teenage Girls by Delaying Their Abortion Choice.*

"The abortion decision is one that simply cannot be postponed."[73] Constricting the right to choose abortion by erecting parental notification or consent requirements (even with a bypass) harms teenage girls disproportionately by delaying their abortion choice. And delay is always harmful.

While abortion at any stage of pregnancy is safer for teenage girls than childbirth, delay in seeking and obtaining an abortion, particularly for girls entering their second trimester, has the largest single effect on the risk to teenage girls of complications from abortion.[74] Yet, for various reasons, teenagers are less likely than older women to obtain abortions during the safer, earlier weeks of gestation.[75]

[71] 648 F.Supp. at 766-770. Experts conclude that communication between parents and children about sexual matters is typically closed, and the forced involvement of parents would not lead to more open, productive communication. *Melton*, *supra* n. 67, at 81.

[72] Melton, *supra* n. 67, at 81; Clary, *supra* n. 51 at 284.

[73] *Bellotti II*, 443 U.S. at 643.

[74] Cates & Grimes, *supra* n. 22, at 158; Yates & Pliner, *Judging Maturity in the Courts: The Massachusetts Consent Statute* 78 Am. J. Pub. Health 646, 648 (1988); *see also Hodgson*, 648 F.Supp. at 765. After eight weeks' gestation, the risk of major complications from abortion rises approximately 15-30% for each week of delay. Cates & Grimes, *supra* n. 22, at 158.

[75] *Risking*, Vol. I, *supra* note 24, at 114. A national survey found that only 34% of abortions obtained by girls ages 15 and younger are performed during the first (and safest) eight weeks of gestation, compared with 41% of

Parental notification and consent requirements necessarily impose additional delay, not only because the minor must wait until the requirements are satisfied, but because the requirements impose another hard and inevitably time-consuming decision on a minor: whether to proceed with such compelled parental involvement, or to pursue alternatives (e.g., going out-of-state or using a judicial by-pass if available). Such further delays only increase the medical risks associated with the abortion procedure to a significant degree.

Even short delays could heighten a patient's emotional tension, increase the costs of the procedure, and push a teenage girl into the second trimester of a pregnancy, when the abortion procedure entails significantly greater financial cost and medical risk.[76] Any increases in the financial costs of the procedure impose heavy, even insurmountable, burdens on teenagers as a group, and fall most heavily on poor teenagers, who tend disproportionately to be members of minority groups. By imposing additional medical risks and prohibitive costs on the

abortions obtained by girls ages 15-19, and 51% of those obtained by women ages 20-24. AGI, *Teenage Pregnancy*, *supra* n. 2, at 55. Adolescents (19 and under) are twice as likely as older women to obtain abortions after twelve weeks. Cates, *supra* n. 22, at 20. One reason for delay is limited access to abortion services, particularly in rural areas, due to difficulties in travel (especially in states with great distances between clinics) and expense. In addition, many teenagers, particularly the very young, fail to recognize the early signs of pregnancy. This may be due to ignorance or because many adolescent girls ordinarily experience menstrual irregularities and therefore do not distinguish them from early signs of pregnancy. *See, e.g.*, AGI, *Teenage Pregnancy*, *supra* n. 2, at 55; *Risking*, Vol. I, *supra* n. 21, at 114; Russo, *Adolescent Abortion: The Epidemiological Context*, in *Adolescent Abortion: Psychological and Legal Issues* 40, 57 (Melton ed. 1986); Bracken & Kasl, *Delay in Seeking Induced Abortion: A Review and Theoretical Analysis*, 121 Am. J. Obstetrics & Gynecology 1008-1019 (1975).

[76] *Hodgson*, 648 F.Supp. at 762. In *Hodgson*, the District Court found as a matter of fact that the cost of abortion increases with gestational age because of the increased skill necessary to perform the procedure. *Id.* at 761. The Court cited the following fee schedule from one clinic: under 12 weeks, $225; 12-14 weeks, $275; 16-18 weeks, $450; 18-19 weeks, $550; 19-21 weeks, $650. After 21 weeks, patients are referred to a particular hospital where, at 22 weeks, the fee is $1600-1800. *Id.*

abortion choice, parental notification and consent requirements run counter to one of the primary reasons abortion was legalized sixteen years ago — to reduce the devastating health risks of illegal abortion.

4. *The Requirement That, to Avoid a Court Hearing,* Both *Parents Must Be Notified is Unduly Burdensome and Contrary to the State's Asserted Purposes in Many Family Situations.*

The two-parent notification requirement of the Minnesota statute is not even minimally rational. It contains no exception for a divorced parent or for parents who are separated or absent, or who have never married, or for dysfunctional families in which one resident parent is likely to become violent or abusive to either the young woman or the other parent upon being informed that a daughter is seeking an abortion with the other spouse's approval.[77]

The two-parent consultation requirement was *found* in Minnesota to be a significant burden on minors which undermined, rather than promoted, healthy intrafamily communication. State-mandated contact with an absent, disinterested, estranged, separated, or potentially violent second biological parent was found to be frequently detrimental to the pregnant woman and, indeed, to the one parent who has been consulted, resulting in *reduced* intrafamily communication.[78]

In Minnesota, 20-25% of minors seeking judicial authorization voluntarily consulted with or were accompanied to hearings by one parent, demonstrating the severe problems caused by requiring notice to both parents. Indeed, two-parent consultation requirements had the perverse effect of inhibiting parent-child communication: When the daughter and one parent agree that contact with the other parent will be coun-

[77] Minn. Stat. Ann. § 144.343(3).

[78] *Hodgson*, 648 F.Supp. at 769 ("[i]n these instances, the requirement that minors notify both biological parents actually *reduces* parent-child communication") (emphasis supplied).

terproductive, a legally-imposed need to notify the second parent or obtain a judicial waiver of notification "distracts the minor and her parent and disrupts their communication."[79] Voluntary communication with one parent is actually *reduced* by a requirement that only consultation with both will suffice; some minors were dissuaded from contacting even one parent when only the consent of two would obviate the need for judicial proceedings.[80]

C. *If Court Upholds Parental Notification, it Must Preserve a Judicial or Other By-Pass to Protect Minors' Privacy Rights, and the By-Pass Must Be Meaningful and Workable.*

1. *By-Pass Must Be Preserved.*

This Court has properly held that "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy."[81] Although *every* minor may not be competent to make the abortion decision by herself, for those who are competent, the fundamental right to decide bars the state from delegating the decision to another.

To protect all minors' privacy rights to decide to terminate their pregnancies without the forced involvement of their parents, a state must provide a by-pass procedure that allows a minor to seek the advice, counsel and support of another competent adult who can help her make the decision herself and who can determine, if the minor is not mature, whether it is in her best interests to have the abortion.[82] A judicial determination is but one, and in many cases not the best, by-pass procedure.[83]

[79] *Id.* at 778.

[80] *Id.* at 769, 778.

[81] *Danforth*, 428 U.S. at 74; *see Akron*, 462 U.S. at 439-440: *Bellotti II*, 443 U.S. at 643.

[82] Ordinarily, the determination of a minor's competence to consent to medical treatment is made by the minor's physician. In Massachusetts, for *example, the common law mature minor rule allows the physician to determine whether the minor is capable of giving informed consent to medical treatment and whether it is in the minor's best interests to notify his or her parents. Baird* v. *Attorney Gen.*, 371 Mass. 741, 754 (1977). Immature minors already require the consent of *one* parent. *Id.* at 753.

[83] Maine has just enacted a comprehensive statute that provides for parental consent or judicial by-pass, but also provides for critical and meaningful alternatives. The statute authorizes a physician to perform an abortion on a minor after the physician has received the informed written consent of that minor and the physician has ensured that the consent is truly "informed" by counseling the minor according to specific criteria and determining that the minor is mentally and physically competent to give consent. *See* An Act to Require Parental Consent to a Minor's Abortion, 1989 Maine Acts Ch. 573, § 2 ¶ 2(2), (3) (amending 22 Me. Rev. Stat. Ann. § 1597-A).

Wisconsin requires providers of abortion services to encourage minors to notify their parents unless they determine that the minor has a valid reason not to do so. In that situation, the statute provides an alternative to parental notification. The hospital or clinic personnel encourage the minor to notify another family member, a close friend, a school counselor, social worker or other appropriate person. Wis. Stat. Ann. § 146.78(5) (1989).

Without a judicial by-pass or other alternative to parental involvement in the abortion decision, four out of ten minors — those who would choose not to consult their parents — will be denied their fundamental right to choose to terminate their pregnancy in private. Some will succumb to anti-choice pressure or their parents' will that they carry to term, others will have an illegal abortion or self-abort, and others will suffer the negative, even violent, consequences that the revelation of their pregnancy or abortion decision causes.

2. *By-Pass Must Be Meaningful and Workable.*

Amici wish to emphasize that by-pass does not *cure* the burdens caused by forced parental notification or consent, particularly two-parent notification or consent. Nor do *amici* endorse the concept of judicial by-pass as the best way to protect minors' constitutional rights. Nevertheless, it is the *minimum* necessary to protect minors' constitutional rights to decide to terminate their pregnancy without an actual or *de*

facto parental veto. Accordingly, a judicial by-pass provision must be meaningful and workable.

Massachusetts has had the longest experience with judicial by-pass, initiating the procedure in 1981. Over that time the procedure has worked about as well as such a procedure could for those who have chosen to use it: Thousands of minors have petitioned the court, all but a minute handful of petitions have been granted without appeal,[84] and the average time period from the time an attorney is contacted and a hearing takes place is 4-5 days.[85] Key to the "survivable" working of the Massachusetts procedure are the Rules and Guidelines issued by the Massachusetts courts. *See* Appendix B. These Rules and Guidelines provide for the essential elements of expedition, confidentiality, appointment of counsel, and the determination of maturity or best interests. Although the Massachusetts by-pass procedure is not without its problems, this procedure is, *when the Rules and Guidelines are followed*, faithful to the teaching of *Bellotti* v. *Baird*, and, as confirmed by nearly ten years of experience, representative of what such a procedure must entail.

Time is of the essence when deciding to terminate a pregnancy, as each additional week of gestation increases the health risks from abortion. To ensure that petitions are heard expeditiously, the Rules and Guidelines specify that petitions should be heard in chambers on any day the court is in session,

[84] Between April 1981 and February 1988, 5,460 minors sought judicial consent for abortion in Massachusetts pursuant to Mass. Gen. L. ch. 112, § 12S. Only twelve petitions were denied: Of these nine were overturned on appeal within three days, one minor petitioned another court, one went out of state, and one minor obtained parental consent during appellate proceedings. PPLM, *supra* n. 68, at 2.

[85] Yates & Pliner, *supra* n. 74, at 648 (though 4.2-5.2 days was average delay, specific delays ranged from one day to 39 days). Much of the reason for expedition in Massachusetts is a combination of the efforts of *amicus* Massachusetts Judicial Consent for Minors Lawyer Referral Panel and cooperative court personnel. This Court should not be so naive as to think that lawyers and court personnel in other states would necessarily be as helpful. Moreover, by-pass causes other delays: i.e., locating an attorney initially, any appellate proceedings and scheduling the abortion procedure some time after the hearing.

expeditiously, and if possible *on the same day of filing.*[86] The Rules and Guidelines provide for waiver of fees and for court-appointed counsel, which is essential to navigate expeditiously through any court procedures. To ensure confidentiality, only a sealed affidavit contains the minor's real name. She need not state her name on any other documents or during the hearing, her name should not appear in the transcript of the proceedings, and the in-chambers hearings are to be held out of the presence of unnecessary court personnel. Moreover, statewide venue is provided so that a minor need not attend court in her neighborhood.[87]

Most importantly, and following the precise lead of *Bellotti II*, the Massachusetts Rules and Guidelines set out a two-tiered approach under which judges are to determine whether to grant the petition. First the judge must determine whether the minor is mature enough to make the decision. Only if the judge determines that she is not mature, does the judge move to the second tier of inquiry, whether the abortion would be in her best interests. The Rules and Guidelines further set forth the appropriate inquiry when making these determinations,

[86] App. B at B-3, ¶ 2. Ideally, a statute should specify very short deadlines for scheduling hearings, rendering decisions, and hearing and deciding appeals in order to avoid delays such as the potential 3-week delay wrought by the Ohio statute. Ohio allows 5 business days for scheduling the initial hearing, 4 days for docketing the appeal and 5 days for the appellate hearing, and calls for decisions "immediately" after the hearing. *Akron Center for Reproductive Health* v. *Rosen*, 633 F.Supp. 1123, 1141-1142 (N.D. Ohio 1986), *aff'd*, *Akron Center for Reproductive Health* v. *Slaby*, 854 F.2d 852 (6th Cir. 1988), *jurisdiction noted*, 109 S.Ct. 3239 (1989). *Compare* La. Rev. Stat. Ann. § 40:1299:35:5 (1989 Cum. Supp.) (hearings to be held within 48 hours of filing of application, for both initial petition and appeal); Nev. Rev. Stat. Ann. § 442.255.2(c) (1986) (hearing must be held within 2 days of filing and decision rendered within 1 day of hearing), *with* Maine Acts Ch. 573 § 2 ¶ 6(C) (5 days both for initial hearing and for appeal); Wyo. Stat. § 35-6-118 (1989 Cum. Supp.) (5 days for initial hearing, no guideline for appeal).

[87] App. B at B-2, ¶¶ 2-3; B-3 to B-4, ¶¶ 4-5. Contrast with the Ohio practice, which requires a minor to provide her true name and address on the complaint. *Rosen*, 633 F.Supp. at 1143-44. Yet, even with the Massachusetts guidelines, a minor's confidentiality can be breached when persons she knows recognize her at court. *See* PPLM, *supra* n. 68, at 4.

including the minor's age, school and work experience, whether the decision is her own and whether she has discussed it with others.[88]

The Rules and Guidelines specifically caution that a judge should not question a minor in such a way as to promote "a particular set of moral values." They direct judges not to inquire into the minor's or her parents views on the morality of abortion, whether the minor considers the fetus to be an "unborn child," or whether the minor believes she is destroying life.[89]

Only if the judge fails to find the minor mature, should he or she consider whether the abortion is in the minor's best interests. The Rules and Guidelines then propose that judges apply the doctrine of "substituted judgment"[90] in conducting the best interests inquiry, explaining,

> [t]hat doctrine essentially requires a court to determine what an incompetent person would choose were she fully

[88] App. B at B-4, ¶¶ 6-8.

[89] App. B at B-4, ¶ 7. Unfortunately, in Massachusetts, and one could predict elsewhere, this guideline is far from uniformly followed. *See Planned Parenthood League of Massachusetts* v. *Bellotti*, 868 F.2d 459, 466 (1st Cir. 1989). Nevertheless, former Massachusetts Superior Court Judge Paul Garrity, who testified in *Hodgson* about his experience with the Massachusetts statute, admitted that he is personally opposed to abortion, yet he heeded the Guidelines' admonition not to let his personal views interfere. He found every minor who appeared before him mature enough to make the decision. Tr. at 1322-1325, *Hodgson*.

Other statutes' lack of standards for determining maturity and best interests are an open invitation for judges improperly to question the minor about her moral and religious views. For example, the Maine statute's catch-all provision that allows a judge to consider "[a]ny other evidence that the court may find useful," 1989 Maine Acts Ch. 573 § 2 ¶ 6(C)(3), opens the door to such improper inquiry. *See also In re T.W.*, 543 So.2d 837, 841 (Fla. App. 5 Dist. 1989) (Florida statute's lack of guidelines for determining maturity or best interests imposes clear danger that judges will render decision on basis of their own moral, religious or political beliefs rather than on a constitutionally permissible basis).

[90] *Superintendent of Belchertown State School* v. *Saikewicz*, 373 Mass. 728, 750 (1977); *Brophy* v. *New England Sinai Hosp., Inc.*, 398 Mass. 417, 431 (1986).

> competent, while bearing in mind her expressed choice and partial competency. Various considerations may be relevant to a "best interest" determination. As to this finding, the court may inquire into the minor's reasons for not seeking her parents' consent. Where the minor is accompanied by one parent who supports her petition, that support should be given great if not dispositive weight.[91]

This Guideline is, of course, critical because it ensures that a judge does not assess a minor's best interests according to the judge's moral views of abortion.[92]

If followed, rules such as the Massachusetts Rules and Guidelines can properly shield minors from harassing questions by judges, expedite the proceedings to avoid undue delay, and protect the minor's privacy and confidentiality as much as possible under the circumstances.

Conclusion

To exercise their fundamental right to reproductive choice, minors need access to reliable information about childbearing and abortion from a competent adult, including a parent, if they choose, or from trained counselors and physicians so that they may ultimately make the decision that is best for

[91] App. B at B-4 to B-5 ¶ 8.

[92] Application of the substituted judgment standard would have prevented the four-week delay in obtaining an abortion for a minor in Alabama where the judge determined that an abortion was not in her best interests because her prognosis for delivering a baby was fair! *See Ex Parte Anonymous*, 531 So.2d 901, 902-903 (Ala. 1988). The minor, 12 years old and 14-16 weeks pregnant, whose mother was in a psychiatric ward and father had left home, testified that she did not want to have the baby, could not take care of the baby or herself, and that her two aunts agreed with her decision. After finding that she was not mature, the trial judge denied her petition ruling that, at 14-16 weeks gestation, her prognosis for delivery was fair. *Id.* Although the ruling was reversed on appeal as clearly improper, four weeks elapsed during appeals to the appellate court, which remanded instead of granting the petition outright, and to the Supreme Court of Alabama.

themselves. If this Court is truly concerned with the quality of childbearing decision making by minors, it must not deter minors who will not voluntarily consult their parents from getting the counseling and health services that they desperately need for a safe abortion or a safe pregnancy. Forced parental notification or consent bars the provision of safe abortion counseling and services to those individuals who need help the most — minors who feel they cannot involve their parents in their reproductive decisions. To protect a minor's privacy, if such notification is upheld, a meaningful by-pass is required, as eight members of this Court recognized in *Bellotti* v. *Baird*. Guidelines such as those in Massachusetts provide the *minimum* essential ingredients of a meaningful, workable by-pass procedure.

For the foregoing reasons, the judgment below in *Hodgson* v. *Minnesota* should be reversed in part, and the judgment in *Ohio* v. *Akron Center for Reproductive Health* should be affirmed.

Respectfully Submitted,

JOHN H. HENN
(Counsel of Record)
NINA JOAN KIMBALL
FOLEY, HOAG & ELIOT
One Post Office Square
Boston, Massachusetts 02109
(617) 482-1390
Attorneys for *Amici Curiae*

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APPENDIX A

Interests of Amici

The Center for Population Options (CPO) is a national, non-profit organization dedicated to the prevention of unintended adolescent pregnancy and too-early childbearing. CPO develops programs to increase opportunities for young people through education, comprehensive health care, and access to family planning services.

Planned Parenthood League of Massachusetts, Inc. is a non-profit organization which, with others, is the certified class representative of minor women who are engaged in an ongoing challenge to the Massachusetts minors' abortion parental consent/judicial by-pass statute, Mass. Gen. L. Ch. 112, §12S, which has been in effect longer than any other such statute in the nation, and which was enacted in direct response to the striking down of the predecessor §12S by the Court in *Bellotti* v. *Baird*.*

Girls Clubs of America serves more than 250,000 girls and young women ages 6-18 nationally through programs and advocacy. Preventing adolescent pregnancy is an important goal of the organization. A major objective of its program in this area is to improve communications between parents and their daughters.

The Massachusetts Judicial Consent for Minors Lawyer Referral Panel is a volunteer association of over two hundred Massachusetts lawyers who for the last eight years have represented more than 6,000 pregnant minors seeking judicial consent for an abortion (in lieu of parental consent) under Mass. Gen. Laws ch. 112, §12S.

Mobilization for Youth Health Services, Inc. is concerned that the erosion of *Roe* v. *Wade* will lead us back to the days where social class and ability-to-pay were highly determina-

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* 443 U.S. 622 (1979) *(Bellotti II)*. The history of the new §12S and the litigation challenging it is set forth in part in *Planned Parenthood League of Massachusetts* v. *Bellotti*, 868 F.2d 459 (1st Cir. 1989).

minative of whether choice was available and, if available, whether that choice was exercised under conditions of hygiene, care, and skill normally accepted as standard for the medical profession. Social realities being what they are, the victims of the curtailment of an essential right for women would be millions of disadvantaged and poor women in the United States.

The United States Student Association (USSA) is a nationwide non-profit membership organization which represents approximately two million students at approximately 200 colleges and universities throughout the United States. USSA has a strong commitment to ensuring access to higher education and the right to self-determination for all individuals regardless of age, gender, economic status, race, disability, sexual/affectional orientation, or veteran status.

Brooklyn YWCA (Young Women's Christian Association) is part of the oldest and largest worldwide women's membership organization dedicated to empowering women. The Brooklyn YWCA opposes any effort to restrict the access of poor and young women to quality health care services, as well as any attempt to deny them their right to reproductive freedom.

Students and Youth Against Racism is a national organization based in New York City with chapters nationwide whose women members include students and youth from many communities. It supports the right of all young women to make the decision to terminate a pregnancy through abortion, without restrictions, if they so choose. To deny safe, legal abortion would seriously harm the health of and discriminate against untold numbers of young women, especially the poor, unemployed, and Black, Latino, Asian and Native Americans, who, without the funds to obtain safe abortions, would have to resort to dangerous health-threatening procedures.

Professor William Kassen, a child psychologist at Yale University, is a member of the National Academy of Sciences and the vice chairman of the Committee on Child Development Research and Public Policy that proposed and contributed to the report *Risking the Future: Adolescent Sexuality, Pregnancy, and Childbearing.*

The American Public Health Association, established in 1872, is a national nongovernmental professional society representing 55,000 members in all disciplines and specialities in public health. APHA is devoted to the universal protection and promotion of public health, and the equality of health services for all persons.

The National Family Planning and Reproductive Health Association, Inc. (NFPRHA) is a non-profit membership corporation designed to improve and expand the delivery of comprehensive family planning and reproductive health care information and services throughout the United States. NFPRHA represents over 85 percent of the agencies and organizations that operate family planning programs with funds received under Title X of the Public Health Services Act of 1970.

Abortions Rights Mobilization (ARM) is a Section 501(c)(3) organization, which uses lawsuits, education and other techniques "to implement and guarantee a women's right to legal abortion as decreed by the U.S. Supreme Court," following ARM's by-laws.

Abortion Rights Council (ARC) was founded in 1968 and currently has 5,000 members and 12,000 supporters in the State of Minnesota. It has as its sole purpose keeping abortions safe and legal for all women. ARC opposes any further restrictions on women's access to abortions and supports the principles established in *Roe* v. *Wade.*

Choices Women's Medical Center is a New York State licensed medical facility serving over 30,000 patients a year in the New York City area for family planning, abortion and prenatal care. Since its founding in 1971, Choices Women's Medical Center has been at the forefront of insuring high quality feminist women's health care to its patients and fighting politically to retain the right to choose.

Child Care Law Center in San Francisco, California is the only legal services organization in the country exclusively dedicated to expanding the supply of affordable, quality child care. It has a particular emphasis on serving the needs of low-income women, and as such it strongly supports the rights of low-income women to have equal access to health services, including abortion.

The National Organization for Women (NOW) is the largest feminist organization in the United States. Fundamental to NOW's purpose is the right of women to control their own bodies and to determine if and when to bear children. Women's right to reproductive freedom impacts not only their right to privacy, but also their health and safety.

The American Association of University Women (AAUW), a network of 140,000 college-educated women, promotes equity for women and girls. The AAUW supports the right of every woman and girl to safe and comprehensive reproductive health care. AAUW believes that decisions concerning reproductive health care are personal ones, and that the right to make informed decisions should be available to *all* women.

The American Jewish Congress, an organization of American Jews founded in 1918, is fully committed to protecting the right of all women to exercise reproductive choices. While it believes that involving parents in the choices of their teenage daughters is desirable, it believes that such involvement cannot be mandated by law, because study after study demonstrates that these laws are wholly ineffective, even, in many cases, counterproductive.

The National Council of Jewish Women, founded in 1893 and numbering 100,000 members across the United States, is dedicated, in the spirit of Judaism, to advancing human welfare and the democratic way of life through a combination of social action, education and community service. It has adopted a National Resolution to work for "the protection of every female's right to choose abortion, and the elimination of obstacles that limit reproductive freedom."

The Women's Law Project (WLP) is a non-profit law firm dedicated to advancing the status and opportunities of

women. WLP believes that the right to reproductive choice is an essential component of women's ability to play an equal role with men in this society, and has engaged in extensive litigation and public education designed to protect women's legal right to abortion.

The Women's Action Alliance, Inc. in New York City works extensively with community-based organizations serving women of color, young women, and low-income women. We are keenly aware of the importance of maintaining a full range of reproductive options for these and all women. If abortion services or access to abortion were to be restricted, these women would have no alternative but to seek dangerous alternatives to safe and legal abortion.

The National Gay & Lesbian Task Force (NGLTF) is a national membership advocacy and political organization founded in 1973, to protect and advance the civil and social rights of lesbians and gay men. NGLTF strongly supports the reproductive freedom of all women and the expansion of a fundamental right to privacy of all people in the area of reproductive and sexual decision-making.

The National Gay Rights Advocates (NGRA) is a non-profit public-interest law firm founded in 1978, which engages in impact litigation throughout the country on behalf of lesbians and gay men. Preserving the constitutional rights to liberty and privacy, rights that are principal components of a woman's right to choose abortion, are of fundamental concern to NGRA's work and its membership.

Lambda Legal Defense and Education Fund, Inc., founded in 1973, is the nation's oldest and largest national legal advocacy organization working in furtherance of the rights of lesbians and gay men. As an organization representing the lesbian and gay community's belief in the constitutional right to liberty and bodily autonomy, Lambda strongly supports the position that women in our society are constitutionally entitled to make their own decisions about whether to choose abortion.

The National Council for Research on Women is an independent association of established centers and organizations that provide institutional resources for feminist research, policy analysis, and educational programs for women and girls.

The Minority Prison Project of Memphis, Tennessee works for the protection of the men, women, and children imprisoned in the United States. We work to try and regain the rights for these humans, under the Constitution, that is denied them daily.

All-Peoples Congress, based in New York City, is a national organization with chapters in communities in many major cities whose women members are Black, Latino, Asian, Native, white, students, lesbians, workers, unemployed, disabled, seniors, single heads of households and those on fixed incomes. It strongly supports a comprehensive federal program of guaranteed reproductive rights and health care for all women, which includes safe, legal, affordable abortion.

The Women's Bar Association of Massachusetts (WBA), with over 1,000 members, is committed to the advancement of women attorneys, to the protection of all women in the legal system, and has been particularly concerned with the protection of a woman's right to choice. The WBA also sponsors a panel of attorneys who represent minors seeking judicial consent for abortion (amicus Massachusetts Judicial Consent for Minors Lawyer Referral Panel).

California Women Lawyers (CWL) is an organization of several thousand women lawyers founded in 1973 for the primary purpose of improving the situation of women in the State of California. CWL is committed to all issues affecting a woman's right to choice, lobbying against various parental consent bills and working with a broad-based coalition to encourage funding and support for programs supportive of choice.

The Women's Bar Association of Illinois ("WBAI") was founded in 1914 for the purpose of promoting and fostering the interests and welfare of women and women attorneys and

to maintain the honor and dignity of the legal profession. WBAI's 1,000 members have long campaigned for individual rights and liberties, including the right of women to make reproductive decisions free from governmental interference.

Women Lawyers' Association of Los Angeles (WLALA), founded in 1919, is the largest local bar association in the State of California emphasizing the concerns of women. WLALA has as members over 1,200 female and male lawyers, judges, and law students who are personally and professionally concerned with the importance of preserving a woman's right to choose for herself whether to terminate a pregnancy.

The New York State Coalition Against Domestic Violence is a membership organization of battered women's shelters, safe home projects, counseling and advocacy organizations and individuals committed to empowering women and helping them to lead violence-free lives. The Coalition believes in women's rights to choice and in the accessibility of services to all women, regardless of economic status. This includes every woman's right to reproductive choice and to medical assistance.

The Tucson Women's Commission was founded in late 1975 by the Mayor and Council of the City of Tucson to assist women in attaining full equality of opportunity in all aspects of life. The Tucson Women's Commission also maintains that public policy in the best interest of women will support a full range of options, information, and services so that every woman has the ability to make her own decision about when, whether, and under what conditions to bear a child.

New York Women in Criminal Justice is an organization of women whose members include police, probation, and correction officers; judges, attorneys, and social workers; others who work in the criminal justice system; inmates and ex-offenders. In furtherance of our concern that offenders who go through the system not come out worse than when they went in, we strongly support the right of a woman to choose abortion, knowing that the offspring of women in prison become the

dysfunctional children in school and often the criminals of the future.

The Missouri Women's Network is a banding together of Missouri organizations and individual women and men to facilitate communication, promote education, and to strengthen advocacy for women's issues based on the 1977 National Plan of Action for Women (adopted in Houston).

The Connecticut Women's Educational and Legal Fund, Inc., with over 400 members, is a non-profit public interest law firm advocating for women's rights. As an organization working for equality, we believe that every woman, without regard to age, religious belief, income, race or disability, must be able to control her own health and reproduction.

Hawaii Women Lawyers is dedicated to the improvement of the status of women attorneys and the support of issues of concern to all women, so as to promote the advancement of all women.

North Carolina Equity, a non-profit organization, is dedicated to the economic advancement of women. We support women's full realization and exercise of their most basic legal rights, including a woman's right to control her own body. This right must include her right to choose an abortion.

The San Francisco Women Lawyers Alliance is a progressive, activist bar organization that was founded in 1983 to provide a vehicle through which women lawyers could address women's issues and enhance the position of women in our society. One of the issues of particular concern to our membership is freedom of choice and reproductive rights for all women.

Queen's Bench of the San Francisco Bay Area, founded in 1912, is the largest bar association in the Northern California area established to promote the interests of women attorneys. Queen's Bench is concerned in maintaining a woman's fundamental right of choice to terminate a pregnancy that was established in *Roe* v. *Wade*.

Fresno Free College Foundation is a community organization with offices in Fresno, California. Its origin in 1968 is connected to an academic freedom case and, since that time, it has, in various ways, been supportive of academic freedom and the civil liberties of students, professors, and citizens.

APPENDIX B

STANDING ORDER 5-81. UNIFORM PROCEDURES REGARDING PETITIONS FOR ABORTION AUTHORIZATION UNDER G.L. c. 112, s. 12 TO INCLUDE AS AN ATTACHMENT SUGGESTED GUIDELINES, ORIGINALLY SET FORTH IN *PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS* v. *BELLOTTI*, NO. 81-124 CIVIL (SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY; LIACOS, J. SINGLE JUSTICE) (JUNE 16, 1981)

(Amended)

Applicable to All Counties

Effective August 1, 1981

(1) Upon the filing of a petition or motion (petition) under G.L. c. 112, § 12S, inserted by St.1980, ch. 240 (a copy of which is attached), the Clerk-Magistrate (clerk) shall immediately bring the matter to the attention of the Regional Administrative Justice or His/Her Designee who will either hear the petition in his/her session or, through the clerk, assign it for a hearing in another session.

In any event, the matter shall be given priority over all other cases then pending "so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman." G.L. c. 112, § 12S, inserted by St.1980, ch. 240. In this regard, the court should not decline to decide a case brought under § 12S because of any pleading omissions or other technical defects and shall assist the minor, particularly if unrepresented by counsel, in presenting relevant facts and by liberally construing the pleadings. (A copy of a form petition, which is to be made easily available to petitioners, is attached.)

If the position is filed in a county in which no session is being held, the clerk of court who received the petition shall immediately notify the Chief Justice of the Superior Court by telephone of the pending petition. The Chief Justice shall then take such action as is necessary to reach a decision promptly

and without delay so as to serve the best interests of the pregnant woman.

(2) Although § 12S permits a pregnant woman less than eighteen years of age to participate in proceedings in the Superior Court Department in her own behalf, it is preferable that the minor be represented by counsel. The statute requires that the court advise her that she has a right to court-appointed counsel and that the court shall, upon her request, provide her with such counsel.

Also, the court may appoint a guardian *ad litem* to represent the minor or may make such other orders as necessary pursuant to Mass.R.Civ.P. 17(b). The compensation for counsel and/or for the guardian *ad litem* shall be certified by the justice as an expense incident to the operation of the court. If the minor requests waiver of costs and fees, as provided by St.1980, c. 539, such costs and fees are to be waived.

(3) As provided by § 12S, all proceedings shall be confidential and all pleadings and other papers filed shall be designated anonymously. For example, the proceedings shall be titled Mary Moe, Mary Doe, etc. If the minor files papers which do not insure her anonymity, the court shall have the papers processed in a manner which will insure anonymity and shall return the defective papers to the minor or her counsel. An affidavit shall accompany the papers in the case. Such affidavit shall reveal the minor's true identity. The affidavit shall be sealed in an envelope which will be identifiable by having the docket number of the case inscribed upon it. All such envelopes shall be kept in a separate file by the clerks of the various courts. All papers in the proceeding shall be impounded.

The clerks of the various courts should undertake to insure that the minor's contact with the clerk's office is confidential and expeditious to the fullest extent practicable. For example, assistance in filing a petition should be provided in a confidential setting, such as a private office. Similarly, one or more persons in the clerk's office should be at all times available to

answer questions asked by a minor, either in person or by phone, and to assist the minor in expeditiously presenting her petition to the court. Each clerk shall designate one or more persons to receive and process § 12S petitions and shall insure that one such person is available to insure prompt treatment.

(4) All proceedings under c. 112, § 12S, shall be conducted jury-waived with a court reporter present. The statute requires the court to make in writing specific factual findings and legal conclusions supporting his or her decision and to order that a record of evidence be maintained which includes his or her own findings and conclusions.

(5) Suggested guidelines, originally emanating from a memorandum of the Single Justice for Suffolk County in *Planned Parenthood League of Massachusetts* v. *Bellotti*, No. 81-124 Civil (Supreme Judicial Court for Suffolk County; Liacos, J. Single Justice) (June 16, 1981), are attached hereto.

SUGGESTED GUIDELINES

The following guidelines for handling § 12S petitions ("petitions") are suggested to the Superior Court. These guidelines are intended to supplement amended Superior Court Standing Order No. 5-81 and not to replace it.

1. Petitions should ordinarily be heard on any day the court is in session.

2. Petitions should be heard as expeditiously as possible upon filing with the Clerk/Magistrate's office, and on the same day if practical.

3. All technical defects in the proceedings and in the pleadings and papers should ordinarily be disregarded by the Court and by the Clerk/Magistrate.

4. Hearings must be confidential and should be held in the judge's lobby except where physically impossible. The petitioner ("minor") should be permitted to have present any person she desires (social worker, counselor, parent, friend), but the judge should exclude all unnecessary court personnel or others. The minor should be free to choose whether to go forward without counsel.

5. The minor should not be required to state her true name. After explaining the impoundment procedures used to ensure confidentiality, the judge may wish to ask the minor her true first name in order to address her by it during the hearing. The transcript should not contain the minor's full true name since she will have previously stated her identity on a sealed affidavit held by the Clerk/Magistrate pursuant to Superior Court Standing Order 12-80.

6. It is contemplated that the judge will conduct the hearing on a "two-tier" basis with "maturity" determined first, and "best interest" addressed only if maturity is not found.

7. As to the "maturity" finding, inquiry may be appropriate in such areas as the minor's age and school and work experience, any history of mental illness or other treatment relating to mental competence, and whether the abortion decision is a personal decision and not one forced upon the minor by another and whether the minor has discussed her decision with other persons. In any inquiry as to the minor's maturity and her understanding of the nature, consequences and significance of her abortion choice, or in any inquiry as to her best interests, it is suggested that the judge should avoid the creation of the appearance of seeking to promote a particular set of moral values by inquiring into the minor's or her parents' views as to the morality of abortion; or into whether the minor considers a fetus to be an "unborn child," as to whether the minor believes she is in some way taking or destroying life.

8. Where the court finds a minor is not mature, it must make a determination of whether the abortion or childbirth alternative is in her "best interest". The court may be guided in making such a determination by the substantially coextensive doctrine of substituted judgment. That doctrine essentially requires a court to determine what an incompetent person would choose were she fully competent, while bearing in mind her expressed choice and partial competency. Various considerations may be relevant to a "best interest" determination. As to this finding, the court may inquire into the minor's

reasons for not seeking her parents' consent. Where the minor is accompanied by one parent who supports her petition, that support should be given great if not dispositive weight.

9. Where the court preliminarily concludes that the minor is mature, appointment of a guardian ad litem should ordinarily be unnecessary. Where the court preliminarily concludes that the minor is not fully mature, it should consider whether such an appointment is necessary to assure protection of the minor's best interest or whether it would lead to unnecessary delay, particularly if the minor is represented by counsel, or has been counseled by competent professionals, or is accompanied by a parent or other adult.

10. In view of the statutory mandate for expeditious decisions, petitions may be decided in chambers and should, in any event, be decided as promptly as possible, and ordinarily within twenty-four hours or less. The Clerk/Magistrate should inform the minor of the decision as soon as possible and in the manner which the minor requests.

11. The Judge or Clerk/Magistrate should give the minor a copy of an order under § 12S bearing the court's docket number, and a copy of her sealed affidavit bearing the same docket number. Where the decision can be made immediately, the Judge may choose to have the minor wait, deliver the order and a copy of the affidavit to her, and seal the original affidavit in her presence.

12. A petition should not be denied or a hearing delayed solely because the minor has not selected a particular clinic, hospital or doctor for performance of the abortion. If the judge authorizes an abortion for an immature minor on the "best interest" basis, he may inquire into her contemplated plans in order to assure himself that the particular course of medical treatment she intends to follow will be in her best interests.

13. Appointed counsel in § 12S proceedings should be paid for in the same fashion as in criminal cases or in such other fashion as the Chief Administrative Justice of the Trial Court finds is best suited for such proceedings.